

25. Consideration of Proposed Policy Amendments Regarding Appraisal Process for Flooded Property Acquisition Program

This item requests the Board to consider proposed amendments to Policy No. 03-01, Approval for Authority for the Acquisition, Disposition, and Leasing of Real Property, and to Policy No. 03-10, Flooded Property Acquisition Program, to establish an appraisal process to be used in determining the purchase price for acquisitions.

County Attorney explained that when the issue was brought to the Board in December, staff expressed some concerns regarding the operation of the program specifically with regard to utilizing a hypothetical appraisal for properties which staff found in many instances was essentially creating a banana for the individuals involved. He suggested that a new appraisal methodology be utilized; there is no real standard on the topic in the area. Mr. Thiele recommended that staff redraft the policy to incorporate a method that is now in the midst of a congressional bill that FEMA is utilizing as described in the agenda request, and that it be brought back to the Board as the methodology (Option 1).

George E. Lewis, 303 N. Gadsden Street, #6, voiced concern about the ordinance language and made suggestions for the Board's consideration:

- Add language shown in underline: Agenda request, page 2 (A) "when purchased or inherited"; consider the federal income tax cost basis as one of the factors since inherited property would take over the fair market value on the date of the death of the decedent to whom the title was traced
- Alleged that that paragraph (B) was open to fraudulent activity. Some financial institutions are granting home equity loans without regard to how much equity is involved and are generally relying on the credit worthiness of the borrower.

Mr. Thiele stated that he used the FEMA policy but pointed out that it would be beneficial to look at the loan definition and base it upon the value of the property as opposed to the applicant's credit-worthiness. Mr. Thiele explained that he would define the type of loan is involved in (B). Commissioner Proctor indicated that it should be a value-based acquisition.

Commissioner Rackleff asked if paragraph B was necessary. Mr. Thiele responded that it is a policy question. If someone obtained an equity loan which exceeded over 100 percent of the actual value of the property, the County does not want to pay off their personal signature or equity loan; the County only wants to pay that which is equal to the value of the property. Mr. Thiele would address that in the policy.

Mr. Lewis raised other concerns:

- Should the mortgage or the secured loan have been in place prior to the last flood event – do not create a situation of collusion where the property owner, at the time of the flood, sells the property in sham transaction where the purchase price is inflated and a "windfall situation" is created. Mr. Lewis felt that the language "the greatest of the following (formulas)" on page 2, paragraph 1 would permit this.
- Gave the following scenario: The property has flooded and the owner collected insurance payments but did not reinvest in the property. Mr. Lewis suggested that there is nothing in the language that states that the County has to adjust the price the County is paying by reducing it by the amount of insurance proceeds that have been collected and not reinvested.

- Should the County compensate someone who has purchased the property with knowledge of the flooding problem? The person may have bought it cheaply from someone under pressure to sell and now they want the highest price and they would be entitled to it.
- Referenced paragraph D and raised the question: Does the County need anything else to make the policy fair and equitable? Staff is begging the question when they include the language: "replacement primary residence that is of comparable value." Mr. Lewis suggested getting away from language that talks about value and, instead, talk about functional equivalent and the appropriate location.
- Suggested that the Board look carefully at what they are paying the property owners – it is an important governmental function and was akin to eminent domain. Mr. Lewis suggested that in many instances it (flooding) is a direct result of the actions the Board has taken in other permitting issues.

Commissioner Proctor felt the focus should be on (C) "market value immediately before the Flood event." He stated that some of Mr. Lewis' comments were speculative observations suggesting a possible collusion and he did not feel this was the case. Commissioner Proctor stated that the policy should look at whether the County had a responsibility in the permitting of a home that was placed in harms way; if the County allows a person to buy in a flood area, they should have known that property value would decline and that it was negligent on the part of the County. He also disagreed with Mr. Lewis regarding the insurance issue and opined that when the consumer has purchased insurance on their home, it has nothing to do with the County, as a government, permitting them to build in a flood zone. The owners paid for private insurance and they are entitled to that and it does not exonerate what government has done in its failure to provide maximum protection. He suggested staying with fair market value before the most recent flood event as outlined in Item C.

Commissioner Grippa moved and was duly seconded by Commissioner Proctor to approve C (an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property.)

Staff advised that this does not affect the 13 properties that are already in the process, the Southside buyout program, where offers have been extended. Mr. Tony Park, Public Works Director, explained that he is still working with those individuals and offers have been extended to them.

Commissioner Rackleff indicated that the motion does not address insurance reimbursement where the County would deduct that from the County's payment. Commissioner Grippa explained that a person should not receive dual payment – they should not have their house bought out by the County and then receive catastrophe or insurance benefits.

To address this, Mr. Thiele explained that the County can require proof and determine whether or not the owner has made a claim; if they have, staff will have to determine if it has been reinvested into the house. Commissioner Grippa stated that this should be incorporated into the motion.

Commissioner Grippa explained that replacement value is the fair market value prior to the flood event taking place and it is based on fair market value based on today's value prior to the flooding event.

Mr. Thiele concurred that this is the definition of replacement value, although it is different than what is contained in subparagraph D. He stated that the replacement value is duplicating the exact house for the value that the house had before the last flooding event; it does not mean buying another house in another location that does not flood; this is two different things, since it may be more expensive to buy in an uphill location. He advised that subparagraph C and D are different.

Commissioner Grippa moved to amend his motion that the County will pay fair market value if they purchase the house, or the homeowner has the option of taking the insurance benefit and using it as they wish.

Commissioner Proctor did not accept the amendment to the motion and withdrew his second.

Commissioner Rackleff seconded the amended motion.

Mr. Thiele stated that the motion on the floor would change that to be the fair market value of the property, a realistic appraisal, not a hypothetical appraisal. The second part of the motion is that there would be an insurance adjustment offset for anyone who chose to take the insurance benefit and not reinvest it in the property. Mr. Thiele felt that the County was on safer legal ground using this method; subparagraph C and D were complementary to each other and he was comfortable with this.

Commissioner Proctor offered a substitute motion to approve C and D as described:

“The Act provides specific criteria to determine the amount of a purchase offer by requiring that the offer be not less than the greatest of the following:

(C an amount equal to the fair market value of the property of the property immediately before the most recent flood event affecting the property; and

D) an amount equal to the replacement value of the property immediately before the most recent flood event affecting the property, except that this subparagraph shall apply in the case only of a property for which the State or community taking action under subsection (C) (2) [to purchase severe repetitive loss properties] determines, and the Director concurs, that the fair market value referred to in subparagraph (C) of the property is less than the purchase price of a replacement primary residence that is of comparable value, functionality equivalent, and located in the same community or market area but not in an area having special flood hazards

Loretta Rainiere, 6702 Chevy Way, spoke about insurance claims and stated that insurance only pays for a portion of items, such as a wall, carpet, and not the full amount of the home. She stated that the affected citizens are not trying to get a windfall and explained that regular home insurance does not cover flooding, only flood insurance covers it and it does not give 100 percent or replacement value.

Commissioner Proctor called the question.

(Mr. Thiele explained that the substitute motion is without the insurance rider.)

The substitute motion failed with a tie vote of 3 – 3 (Commissioners Sauls, Maloy, and Proctor voted in the affirmative; Commissioners Grippa, Thael and Rackleff voted in opposition; Commissioner Winchester was out of Chambers).

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The amended motion on the floor is to approve Option 1 with (C) (with addition of an insurance clause shown in underline):

"The Act provides specific criteria to determine the amount of a purchase offer by requiring that the offer be not less than the greatest of the following:

Option 1: Approve proposed appraisal procedure and direct the County Attorney to make amendments to Board Policies 03-01 and 03-10, as appropriate, and bring back the amended policies for Board approval. The amendments are to approve C with the insurance language as shown in underline:

C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property offset by the amount of insurance, which has not been reinvested into the property.

The amended motion carried 4 – 2 (Commissioners Proctor and Maloy voted in opposition and Commissioner Winchester was out of Chambers).